IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4422 of 2007()

CP.25/2007 of J.M.F.C.-II,THRISSUR

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PETITIONER : ACCUSED:

MUKUNDAN, AGED 38 YEARS, S/O.CHANDRAN, KOTTENKUNNATHU HOUSE, CHAMAKKAD DESOM, KUTTOOR P.O THRISSUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY EXCISE INSPECTOR, ANTHIKKAD EXCISE RANGE, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.P. RAVINDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4422 of 2007

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Dated this the 20th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. Altogether there were two accused. The second accused is no more. The allegation against the accused is that they were together making preparations for the manufacture of illicit liquor. Both the accused allegedly ran away on seeing the officials. The petitioner was not arrested in the course of the investigation. The investigation is complete. Final report has already been filed. Cognizance has been taken. The petitioner received summons from the court after registration of the committal proceedings. The petitioner appeared twice before the learned Magistrate through counsel. On the second occasion the application was dismissed. He now finds a non-bailable warrant issued by the learned Magistrate chasing him.

2. According to the petitioner, the allegations are totally false. Eventhough the crime was registered in 2000, he was not arrested.

Though he was very much available in the locality, as the officials knew that the allegations are false, he was not arrested, he submits. In these circumstances anticipatory bail may be granted and the petitioner may be saved of the trauma of arrest and detention, he prays.

3. The application is opposed by the learned Prosecutor. I find merit in the opposition. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. It must be considered in the light of the decisions in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22) and **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is hence dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate having jurisdiction and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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